IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No. 4650 of 2005
Date of Decision: 24.01.2007

Amar Nath & Ors. Petitioners

Vs.

Munish Kumar & Anr. Respondents

CORAM Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr.J.R.Mittal, Senior Advocate,
with Mr.Kashmir Singh, Advocate,
for the petitioners.

Mr.Munish Jolly, Advocate,
for respondent No.1.

Vinod K.Sharma, J.

The petitioner by way of present revision petition has challenged the orders passed by the Appellate Authority, Sangrur allowing the application moved by the respondent-landlord under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 (for short the Act).

The respondent-landlord filed an application under Section 13 of the Act for eviction of the petitioners from one shop. It was the case of the respondent-landlord that previously Ashok Kumar, father of the applicant was owner and landlord of the shop in dispute wherein Amar Nath

and Pawan Kumar were inducted as tenants at annual rent of Rs.2900/-. It was claimed that there existed relationship of landlord and tenant between Ashok Kumar and the petitioners. It was also claimed by the respondent that in pursuance to the oral family settlement between Ashok Kumar and his family members in the year 1996, the disputed shop was given to the respondent-landlord. The said oral family settlement was reduced into writing by way of memorandum of family settlement and thus, the respondent-landlord being the owner became the landlord of the premises qua the petitioners. The ejectment of the petitioners was sought on the ground of non-payment of rent as well as on the ground of personal necessity.

The petition was contested by the petitioners herein who denied the relationship of landlord and tenant and contested the claim of the respondent for eviction on the ground of personal necessity. It was also the case of the petitioner-tenants that the landlord did not comply with the provisions of Section 13 of the Act as ingredients of Section 13 were not pleaded or proved regarding occupation of any other building in the urban area. The said averments in the written statement were controverted by the respondent-landlord by filing replication and on the pleadings of the parties the following issues were framed:-

1. Whether there is a relationship of landlord and tenant between the parties? OPA

2. Whether the respondents have not paid rent due and house tax to the applicant since 1.10.91? OPA

3. Whether the applicant is entitled to recover house tax

from the respondents? OPA

4. Whether the applicant requires the shop in dispute for his personal use and necessity? OPA

5. Whether the present applicant is not maintainable? OPR

6. Whether the applicant has no right or locus-standi to file the present application? OPR

7. Relief.

Learned Rent Controller decided issue No.1 in favour of the respondent-landlord. However, issues No.2 and 3 were not pressed as the petitioners tendered the rent as demanded by the respondent-landlord. However, on issue No.4 the learned Rent Controller held that the applicant has failed to prove his bona fide need and accordingly, dismissed the application. However, in appeal finding on issue No.4 was reversed and ejectment was ordered while findings on other issues were affirmed.

It may be mentioned here that the cross-objections filed by the petitioners qua issue No.1 were also dismissed by the Appellate Authority.

Mr.J.R.Mittal, learned Senior Counsel appearing on behalf of the petitioners vehemently contended that the orders passed by the learned courts below on issue No.1 cannot be sustained as the courts below have failed to consider the evidence led by the petitioners by way of Ex.R.1 to Ex.R.3. The contention of the learned senior counsel was that Ex. R.1 to R.3 clearly proved the fact that the respondent was running a joint business with other family members and therefore, it could not be said that there has been any family settlement vide which the shop stood transferred to the respondent-landlord.

It is pertinent to mention here that the learned courts below relied upon the judgment of this Court in the case of **Roshan Lal Vs. Ved Parkash 2003 (1) SLJ 569** to come to the conclusion that it was not open to the tenant to challenge the relationship of landlord and tenant and family partition between the co-owners of the premises in summary proceedings under the Act. It was held by this Court that the family partition pleaded by the landlord has to be taken to be correct. The learned Appellate Authority also placed reliance on the judgment of Hon'ble Supreme Court in the case of **Lingala Kondala Rao Vs. Vootukuri Narayana Rao 2003 (1) RCR 79** to come to the conclusion that the execution of document conferring title of landlord cannot be allowed to be gone into so long as the document has been executed and registered in accordance with law and the transaction is otherwise legal.

Learned Senior Counsel appearing for the petitioner thereafter contended that as the petitioners have failed to plead the requisite ingredients as envisaged under section 13 (3) (a) (i) of the Act he was not entitled to seek the eviction as he had failed to plead that he was not occupying any other building in the urban area concerned and he had merely stated that he has not vacated any such building without sufficient cause after the commencement of the Act in the said urban area. In support of this contention, petitioners have placed reliance on the judgment of Hon'ble Supreme Court in the case of **Dina Nath Vs. Pooran Lal 2001 (2) R.C.R. (Rent) 130** wherein the Hon'ble Supreme Court while interpreting Section 12 of Madhya Pradesh Accommodation Control Act, 1961 has been pleased to lay down as under:-

> " The Section, on a plain reading, is clear and specific,. The criteria to be fulfilled for an order of eviction under the provision are:
>
> (1) that the non-residential accommodation is required bona fide by the landlord for the purpose of continuing or standing his business or that of any of his major sons; and
>
> (ii) that the landlord of such person has no other reasonably suitable non-residential accommodation of his own in his occupation in the city or town concerned. (emphasis supplied)."

Mr.J.R.Mittal, learned Senior Counsel appearing on behalf of the petitioners also contended that in the present case the respondent-landlord has failed to prove his bona fide need and his assertion that he wanted to start his separate business was a mere desire. In support of this contention he placed reliance on the judgment of the Hon'ble Supreme Court in the case of **T.Sivasubramaniam and others Vs. Kasinath Pujari and others AIR 1999 SC 3190, Harjit Kaur Vs. M.K.Seth and another (2005-1) P.L.R. 547 and Rattan Chand Jain Vs. Charan Singh 1978 (1) R.C.R. (Rent) 265.**

Mr.J.R.Mittal, learned Senior Counsel appearing on behalf of the petitioners also placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Onkar Nath Vs. Ved Vyas 1980 (1) R.C.R. (Rent) 304** to contend that if bona fide ingredients mentioned in the Act are not pleaded and proved, the ejectment cannot be ordered.

Mr.Munish Jolly, learned Counsel appearing on behalf of

respondent No.1 contended that the learned courts below were right in coming to the conclusion that it was not open to the petitioner to challenge the family settlement between the parties. As regards the second contention raised by the learned Senior Counsel appearing on behalf of the petitioners was concerned, learned counsel for respondent No.1 controverted the same on the ground that in response to the written statement filed by the petitioner respondent had taken a specific plea that he was not in occupation of any other building nor he vacated the same and therefore, the ingredients of Section 13 (1)(a)(i) stood fully complied with.

He further placed reliance on the judgment of this Court in the case of **Daulat Ram son of Harnam Mal Aggarwal Vs. Girdhari Lal son of Kira Mal Aggarwal 1980 P.L.R. 182** to contend that even if the landlord has failed to plead all the ingredients as required under section 13 (3) (a) (i) of the Act but evidence is led to the said effect, then the non-pleading of ingredients cannot be treated to be fatal. The contention of the learned counsel was that in the said judgment the judgment of Hon'ble Supreme Court relied upon by the petitioner was duly noticed and distinguished.

Mr.Munish Jolly learned counsel appearing on behalf of the respondent also placed reliance on the judgment of this Court in the case of **Paramjit Singh and Ors. Vs. Bawa Guredas Ram (Dead) and ors. 1978 P.L.R. 474** which is also to the same effect. Learned counsel for the respondent thereafter placed reliance on the judgment of Hon'ble Supreme Court in the case of **Baba Kashinath Bhinge Vs. Samast Lingayat Gavali 1995 (1) R.C.R. (Rent) 518** to contend that once the parties had

understood the case of each other and issues were framed and evidence was adduced, the technicalities in the pleadings recede to the background and therefore, it is not open to the petitioners to challenge the findings on the plea that ingredients of Section 13 (3)(a) (i) have not been complied with.

I have considered the arguments raised by the learned counsel for the parties and find that the learned Appellate Authority on the basis of evidence adduced has recorded a finding that the respondent-landlord has separated from the family by way of oral family partition. It also recorded a finding that respondent was idle and not doing any work, whereas earlier he was in service. It also took into consideration the evidence led by the respondents which according to the petitioner showed that the respondent was working with him and came to the conclusion that the respondent had every right to start his own business. It was also recorded that the respondent had been paid money as per family settlement and therefore, came to the conclusion that the shop was bona fide required for his personal use and occupation. It also noticed that there was no evidence on record to show that the respondent owned any other shop.

In this view of the matter a finding has rightly been recorded that it was not a mere wish but need of the respondent-landlord and therefore, I find no force in the contention raised by Mr.J.R.Mittal, learned Senior Counsel appearing on behalf of the petitioners that the ejectment has been ordered on mere desire in the absence of the bona fide need. There is no force in the contention of the learned senior counsel for the petitioners that the landlord had failed to plead the necessary ingredients of Section 13 (3)(a)(i) of the Act to claim eviction. The pleadings of the parties inclusive

of the replication filed by the landlord as also evidence led clearly proved that the respondent-landlord was not in occupation of any other building nor he vacated the same without any reasonable cause after the commencement of the Act.

Accordingly, I find no force in this revision petition, which is dismissed.

(Vinod K.Sharma)
Judge

January 24,2007
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